LAM CHIAK

v.

PUBLIC PROSECUTOR

HIGH COURT, SINGAPORE
LP THEAN J
[CRIMINAL MOTION NO. 34 OF 1985]
22 AUGUST 1985

CRIMINAL LAW AND PROCEDURE: *Validity of warrant to search - Warrant did not specify the period in which it was to remain in force - Meaning of "reasonable number of days" - Criminal Procedure Code (Cap. 113), s. 62 (2).*

A warrant was issued by a Magistrate upon a complaint made to him that an offence under s. 3(1) of the Copyright (Gramaphone Records and Government Broadcasting) Act had been committed by the applicant.

The applicant submitted that under s. 62(2) of the Criminal Procedure Code the execution of the warrant 6 days after it was issued was unlawful. Section 62(2) provides that "Every such warrant shall remain in force for a reasonable number of days to be specified in the warrant." In the instant case the warrant did not specify the period in which it was to remain in force.

Held:

[1] Subsection 2 of s. 62 does not provide that a warrant shall specify a reasonable number of days in which it is to remain in force. What is provided essentially is the continuation in force of a warrant after its issue, subject only to one limitation: the period therein to be specified in which it is to remain in force must be reasonable. What is reasonable depends on the circumstances and is tested objectively.

[2] On a true construction of s. 62(2) the requirement to specify the number of days in a warrant is directory and not mandatory, and a failure to comply with such requirement is not fatal to the continuation in force of the warrant after its issue.

[3] A period of 5 to 7 days after its issue is reasonable. Hence the warrant was in force at the date of its execution.

[4] Even if the warrant was invalid at the date of its execution, an order to return the goods seized would not be made because the goods seized were material exhibits for the purpose of the hearing of charges which was pending.

[Application dismissed.]

Legislation referred to:
Copyright (Gramaphone Records and Government Broadcasting) Act [Sing], s. 3(1)
Criminal Procedure Code [Sing], ss. 62(1), (2)

For the applicant - Wee
For the public prosecutor - Gwee

JUDGMENT

LP Thean J:

This is an application for an order that the execution of the Warrant to Search No. 0172 dated 3 November 1984 ("the Warrant") be declared invalid and the goods seized pursuant to the Warrant be returned to the applicant on the ground that the Warrant was not in force on the date of execution. The Warrant was issued by the Magistrate on that day upon a complaint made to him that an offence under s. 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188) had been committed and the Warrant authorised and required the officer named therein to search for articles specified therein at the premises of the applicant, namely, Lucky Music Centre, #B1-59, Lucky Plaza, Singapore 0923 and if found, to produce the same forthwith before the Magistrate's Court. The Warrant was executed on 8 November 1984 by Detective/Corporal D. Rajoo of the Commercial Crime Division accompanied by representatives of the IFPI (South East Asia) Ltd.

Mr. Wee on behalf of the applicant submits that under s. 62(2) of the Criminal Procedure Code (Cap. 113) every warrant to search shall remain in force for a reasonable number of days to be specified in the warrant. In the instant case the Warrant did not specify the period in which it was to remain in force. Accordingly, the Warrant was in force only on the day it was issued, 3 November 1984, and not subsequently, and hence the execution of the Warrant on 8 November 1984, some 6 days later, was unlawful. He further submits that all the goods seized and taken by the police in the unlawful execution of the Warrant should be ordered to be returned to the applicant.

Initially, I felt persuaded by this argument. However, on a careful perusal of the said s. 62(2) and on further reflection I find it difficult to sustain such an argument upon a true construction of s. 62(2). A warrant duly issued under s. 60 or 61 (as the case may be) of the Criminal Procedure Code and in compliance with s. 62(1) thereof comes into force upon its issue. And under s. 62(2) thereof the warrant is to remain in force for a reasonable number of days to be specified therein. The said s. 62(2) is in the following terms:

> (2) Every such warrant shall remain in force for reasonable number of days to be specified in the warrant.

It is significant to note that the subsection does not provide that a warrant shall specify a reasonable number of days in which it is to remain in force. What it provides essentially is the continuation in force of a warrant after its issue, subject only to one limitation: the period therein to be specified in which it is to remain in force must be reasonable. That is the essence of the subsection. As to what number of days is considered to be reasonable must inevitably depend on the circumstances: such as the area in which the search is to be conducted, the articles of goods to be searched and the offence alleged to be committed. The legislature has deemed fit to leave it to the Court issuing the warrant to specify, as an administrative act, the number of days in which the warrant is to remain in force. Whatever may be the number of days specified therein, it must meet the test of reasonableness; and the test is an objective one. On a true construction of subsection (2) of s. 62 the requirement to specify the number of days in a warrant is directory and not mandatory, and a failure to comply with such requirement is not fatal to the continuation in force of the warrant after its use.

In the instant case the failure to specify in the Warrant the number of days in which the Warrant was to remain in force did not render the Warrant invalid immediately after the date of its issue. The Warrant was valid when it was issued and remained valid for a reasonable number of days, notwithstanding that such number of days was not stated therein. In my

view, in the circumstances of this case a period of 5 to 7 days after its issue was undoubtedly reasonable. Accordingly, I hold that the Warrant was in force at the date of its execution, namely:8 November 1984.

At any rate, even if I am persuaded to hold that the Warrant was invalid at the date of its execution, I would, nevertheless, not be disposed to make an order for the return of the goods seized to the applicant. The applicant has been charged in the Magistrate's Court for offences under s. 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 188) and the hearing of such charges is pending. The goods seized are obviously material exhibits for the purpose of the hearing before the Magistrate's Court. In these circumstances, I would be disposed to make an order that the exhibits remain where they are.

I therefore dismiss this application.

Also found at [1986] 1 CLJ 97